

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

HOSEZA O'NEIL STAPLE, #2031095 §

VS. § CIVIL ACTION NO. 6:18cv460

DIRECTOR, TDCJ-CID §

ORDER OF DISMISSAL

Petitioner Hoseza Staple, proceeding *pro se*, filed this petition for writ of habeas corpus under 28 U.S.C. § 2254 challenging his conviction in state court. The cause of action was referred to United States Magistrate Judge K. Nicole Mitchell for findings of fact, conclusions of law, and recommendations for the disposition of the petition.

On June 15, 2021, Judge Mitchell issued a Report, (Dkt. #21), recommending that Petitioner's habeas petition be denied as time-bared and that Petitioner also be denied a certificate of appealability. A copy of this Report was sent to Petitioner at his last-known address. To date, however, objections have not been filed. The Fifth Circuit has explained that when a letter is properly placed in the United States mail, a presumption exists that the letter reached its destination in the usual time frame—and was actually received by the person to whom it was addressed. *See Faciane v. Sun Life Assurance Co. of Canada*, 931 F.3d 413, 420-21 & n.9 (5th Cir. 2019).

Because no objections to Judge Mitchell's Report have been filed, Petitioner is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly, it is

ORDERED that the Report of the United States Magistrate Judge, (Dkt. #21), is **ADOPTED** as the opinion of the court. Further, it is

ORDERED that Petitioner's habeas petition is **DENIED** as time-barred and the above-styled civil action is hereby **DISMISSED** with prejudice. Petitioner is further **DENIED** a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED** as moot.

SIGNED this the 31st day of July, 2021.


RICHARD A. SCELL
UNITED STATES DISTRICT JUDGE